IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9.02.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

Writ Petition No.7959 of 1997

Murugan Auto Service,
rep. by its Partner
N. Pachiappan. .. Petitioner

Vs.

1. The District Collector,
   Periyar District,
   Erode.

2. The Tahsildar,
   Dharapuram-638 656,
   Periyar District.

3. The Accountant General,
   Chennai.

4. The Divisional Manager,
   Indian Oil Corporation,
   Coimbatore. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the relief as stated therein.

For petitioner : Mr.M.M.Sundaresh for
Mr.Saravanan

For respondents 1to3: Mrs.V.Velumani, AGP

For 4th respondent : Mrs.Poornimaviswanathan

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O R D E R

This Writ Petition has been filed seeking to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent relating to Proceedings No.14876/94/A2 dated 20.12.1994 and the consequential order of the second respondent in Proceedings No.14876/94/A2 dated 16.5.1997, quash the same and

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direct the respondents to refund the sum of Rs.40,000/- paid by the petitioner's Bunk on 6.12.1995.

2. The brief facts of the case are that the petitioner was a dealer of a petrol bunk with the fourth respondent Corporation. There was a lease agreement in the year 1974 between the first respondent and the fourth respondent and the rent was fixed at Rs.694/= per annum and the lease period was extended till the year 1984. Since the lease period expired on 31.12.1984 the fourth respondent sent an application to respondents 1 and 2 for renewal of lease because it is a Government land. The second respondent also has recommended the renewal of the lease. Since the lease has not been extended, the fourth respondent made representations, for which the second respondent sent a letter on 18.2.1993 stating that from 1988 onwards, the power of giving lease has been transferred to the Highway Department since the property belongs to the said department and directed the petitioner to approach the Highways Department. Therefore, the petitioner made an application to the Highways Department, but no orders have been passed till date.

3. The further case of the petitioner is that on 20.12.1994, the second respondent herein, based upon the audit report, passed an order directing the fourth respondent Corporation and the petitioner herein to pay a sum of Rs.1,36,579/= fixing the rent from 1.1.1985 to 31.12.1994 on the expiry of the lease period on 31.12.1984. Thereafter, yet another representation was made to the first respondent making their objections, but without considering the same, the first respondent passed an order on 7.5.1997 directing them to pay a sum of Rs.1,65,289/= within a period of one week, otherwise recovery proceedings would be initiated under the Revenue Recovery Act. Thereafter, the second respondent passed the impugned order dated 16.5.1997, challenging which, the present writ petition has been filed.

4. During arguments, the learned counsel appearing on behalf of the petitioner would submit that the principles of natural justice have been violated because the rents have been unilaterally fixed by respondents 1 and 2 without hearing the petitioner and the fourth respondent; that the representations of the petitioner and the fourth respondent have not been considered at all; that there is no jurisdiction vested with respondents 1 and 2 to fix the rent since even according to the second respondent, after 1988, the power of giving lease has been delegated to the Highways Department. Therefore, respondents 1 and 2 have no power to fix the rent, if at all, it is only the Highways Department. Moreover, in any case, respondents 1 and 2 cannot fix the rent merely based on the audit report. Learned counsel would further submit that when respondents 1 and 2 have

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no power of leasing, the question of demanding the rent does not arise at all; that they have shifted their premises in the year 1994 itself and would cite a judgment reported in JAMSHED HORMUSH HORMUSJI WADIA Vs. BOARD OF TRUSTEES PORT OF MUMBAI & ANOTHER (2004 3 SCC 214) wherein it is held

> "The position of law is settled that the State and its authorities including instrumentalities of States have to be just, fair and reasonable in all their activities including those in the field of contracts. Even while playing the role of a landlord or a tenant, the State and its authorities remain so and cannot be heard or seen causing displeasure or discomfort to Article 14 of the Constitution of India."

Learned counsel would submit that even the Apex Court says that for fixing the rent, the market value should not be taken into consideration; that even the impugned order does not say that they have not handed over possession of the premises; that respondents 1 and 2 cannot fasten the liability without hearing the petitioner.

5. Sailing along with the arguments of the petitioner, the learned counsel appearing on behalf of the fourth respondent/Corporation would submit that the orders and the proceedings of respondents 1 to 3 cannot be sustained for the simple reason that the lease has not been renewed from 01.01.1985, in spite of which an amount of RS.40,000/= has been paid by the petitioner on 6.12.1995; that having fixed the rent at RS.785/=, the authorities have revised the rent after four years unilaterally and the government has not given any explanation for that. The issues are that whether they have jurisdiction to pass an order with retrospective effect and whether they have any jurisdiction to revise the rent without any opportunity; that though a letter was written to the District Collector on 15.5.1997 stating that they are not doing the business from 1.1.1995 and hence to take over the site from them immediately, they have failed to take any action; that the admitted rent has been paid, but the enhanced rent, as per the impugned order has not been paid. But the rent for the year 1.1.1992 to 31.12.1992 has been remitted at the rate of RS.785/-.

6. In reply, the learned AGP appearing on behalf of respondents 1 to 3 would submit that as on September 2004, the arrears of rent is accumulated to the tune of Rs.7,24,526/=. The petitioner has not handed over vacant possession of the land to the respondents. The details of lease rent was also sent to the fourth respondent Corporation by letter dated 20.12.2004 on receipt of which, the Corporation has paid a sum of Rs.40,000/=

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on 6.12.1995 and after adjusting the said amount of Rs.40,000/=, still an amount of Rs.7,24,526/= is due and payable till September 2004.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner, the respondents 1 and 2 and the 4th respondent as well what this Court is able to assess is that the subject matter is the Petrol Bunk and the said business was run by the petitioner as the dealer of the 4th respondent Indian Oil Corporation; that admittedly a lease agreement was entered into in between the first respondent and the 4th respondent corporation in the year 1974 and the annual rent was fixed at Rs.694/- initially and thereafter the said lease period had been extended for a further term of 10 years and at the request of the petitioner and the 4th respondent i.e., till the year 1994.

8. It is the case of the petitioner that since the land belongs to the respondents 1 and 2, after the expiry of the lease period the 4th respondent sent an application to the respondents 1 and 2 for renewal of the lease and the same was renewed for a further term of 10 years. It is further averred on the part of the petitioner that the 4th respondent made representations to the 2nd respondent for which the 2nd respondent is reported to have sent a letter dated 18.2.1993 stating that from the year 1988 onwards the power of lease had been transferred to the Highways Department and directing the petitioner to approach the Highways Department. This petitioner would simply come forward to allege that he made an application to the Highways Departments, but with no orders till the date and that whileso the impugned order directing the 4th respondent to pay a sum of Rs.1,36,579/- covering the period from 1.1.1985 to 31.12.1994 and in spite of their objections the first respondent passed an order dated 7.5.1997 directing them to pay a sum of Rs.1,65,289/- within a period of one week lest, proceedings would be initiated under Revenue Recovery Act and thereafter on 16.5.1997 the 2nd respondent also passed the other impugned order and it is only challenging these two orders, the petitioner has come forward to file the above writ petition in the year 1997.

9. So far as the case of the petitioner as put up in the above writ petition is concerned, that though he is in physical possession and enjoyment of the leasehold premises running a petrol bunk as the distributor of the 4th respondent corporation, the lease agreement is only in between the 1st respondent and 4th respondent and the respondents 1 and 2 both are the representatives of the Government.

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10. It is relevant to point out that both the 4th respondent corporation and the petitioner are sailing together so far as the subject of lease and the subject matter, the leasehold property, which is a Government property are concerned, at the outset it is relevant to point out that only distorted and inconsistent versions either regarding the lease or regarding all those transactions pertaining to the enhancement of lease rent have been given in an inadequate manner and therefore the full picture of the whole drama is not able to be assessed. However, on the part of the petitioner he would come forward to state that after 1994 there was no extension of lease period and in the year 1997 he would come forward to file the above writ petition and now during arguments the petitioner's counsel would come forward to allege that in a communication he was directed to contact the Highways Department, and according to the petitioner the communication stated that since the lease had been delegated to the Highways Department it was only the Highways Department which was to deal with the petitioner and not the respondents 1 and 2, who are vested with jurisdiction at all and therefore the petitioner would plead that when the respondents 1 and 2 have no power of lease, the question of demanding rent does not arise at all, and therefore the petitioner would plead that when the respondents 1 and 2 have no power of lease, the question of demanding the rent does not arise at all, that they have vacated the premises in the year 1994 itself.

11. On the other hand, on the part of the respondents 1 and 2 it would be vehemently argued by the Additional Government Pleader to the effect that the lease is still subsisting; that by mutual consent of the 4th respondent the rent was enhanced in accordance with which the impugned orders were passed by the respondents 1 and 2 and in order to evade responsibility of late the petitioner has come forward to put up a wrong statement to the effect that from the year 1994 onwards they are not in possession of the premises whereas till date, they are not only in possession and enjoyment of the said premises but the very lease entered into in between the Government represented by the first respondent and the 4th respondent corporation is in subsistence and in accordance with the agreed norms as denoted in the impugned order passed by the respondents 1 and 2 the petitioner and the 4th respondent have to pay immediately the demanded arrears of lease amount; that since the petitioner obtained the order of stay in the above proceeding in the past 8 years the respondents 1 and 2 are not in a position to collect the arrears of lease amount or to do anything else and therefore on the part of the respondents 1 and 2 it would be very strongly argued to the effect that a false case has been put up by the petitioner with distorted version regarding the lease based on which no decision could be arrived at by this Court. The learned Additional Government Pleader would

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end up her arguments further revealing that till September, 2004 the arrears of rent has accumulated to Rs.7,24,526/- which the petitioner and the 4th respondent corporation are jointly and severally liable to pay from which they cannot escape. It would also be represented that they paid only Rs.40,000/- immediately on receipt of the impugned order and thereafter they stopped from paying the rest of the arrears of lease rent taking advantage of the stay and the long pendency of the above writ petition.

12. In such a state of affairs one could very easily understand what would be the plight of the Government regarding its property as is the leased premises in the case in hand. Neither the petitioner who is in occupation of the premises nor the 4th respondent corporation come forward to act in a responsible manner, thus honouring the commitment and since it is the Government property even the respondents 1 and 2, who are the guardians of such Government properties have not cared for collecting the lease rent whenever they become due or to initiate such legal measures and now since the above writ petition has also been kept pending for more than 8 years coupled with the operation of stay against the respondents 1 and 2, it could be understood that during the pendency of the writ petition nothing constructive could have been done by them and therefore it has become incumbent on the part of this Court to pass orders at the earliest within the given time and opportunity based on those materials placed on record.

13. On an overall consideration of the facts and circumstances encircling the lease agreement admittedly entered into in between the Government represented by the first respondent and the 4th respondent, it could be understood that neither the representatives of the Government nor that of the 4th respondent corporation have acted in a prompt manner only because the leasehold property is a Government property and the lease rent is a public money and therefore because of the self interested officials of these respondents the collection of the leased rent has not been done promptly till the case was registered as a result of which, it has accumulated to the tune of Rs.1,65,289/- as it could be seen from the orders impugned even at the time of filing of the above writ petition and now the same has been accumulated to Rs.7,24,526/- which undoubtedly the petitioner and the 4th respondent particularly the 4th respondent, who is the lessee till date since no way it could be seen either the petitioner or the 4th respondent are able to prove to the effect they have either vacated the premises at any point of time earlier as it should be done in the normal course of lease nor have they been prompt in the payment of the agreed lease rent which has accumulated to Rs.7,26,526/-, which they are liable to pay. Barring this, no other vague or evasive pleadings of the petitioner could either be considered by this

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Court or could any order be passed to that effect and therefore the only course that is left open for this Court is to dismiss the above writ petition, since the question of quashing the two orders passed by the respondents 1 and 2 as it is prayed for in the prayer column in the above writ petition does not arise at all and unless the above writ petition is dismissed, the respondents 1 and 2 being the representatives of the Government may not be in a position to realise the huge arrears of leased rent from the petitioner and the 4th respondent who are jointly and severally liable to pay the same as per the agreed norms and hence the following order.

In result,

(i) The above writ petition does not merit acceptance but only becomes liable to be dismissed and is dismissed accordingly.

(ii) The second respondent's Proceedings No.14876/94/A2 dated 20.12.1994 and the consequential order of the second respondent in his Proceedings No.14876/94/A2 dated 16.5.1997, are hereby confirmed;

(iii) The respondents 1 and 2 herein are at liberty to collect the arrears of lease rent up-to-date from the petitioner and the 4th respondent;

(iv) There shall be no order as to costs.

gs/ks

Sd/
Asst.Registrar

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Sub Asst.Registrar

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+ 1 cc to Mr.S.Saravanan, Advocate SR 5773

+ 1 cc to Mr.A.K.Sriram Advocate SR 5950

+ 1 cc to the Government Pleader SR 5721

Order in

W.P.No.7959 of 1997

MM(CO)
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